

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON ROMERO,

Plaintiff,

V.

STATE OF WASHINGTON et al.,

Defendants.

CASE NO. 2:20-cv-01027-TL

ORDER ON THE PARTIES' MOTIONS *IN LIMINE*

This matter is before the Court on the Plaintiffs' Motions in Limine (Dkt. No. 84) and

Defendants' Motions in Limine (Dkt. No. 83). Having reviewed the Parties' motions, their

respective responses (Dkt. Nos. 88 and 90), and the relevant record, as well as having heard oral

argument on the disputed motions, the Court now rules on each motion.

J. BACKGROUND

1. BACKGROUND

Plaintiff brings this civil rights action under 42 U.S.C. § 1983 related to the alleged delay and denial of medical treatment. Dkt. No. 1-2. The Court has already found Defendants liable for negligence (Dkt. No. 71 at 11), and Defendants have withdrawn their affirmative defenses (Dkt. No. 81).

1 No. 82). The only issue remaining for trial, therefore, is the determination of damages. The Court
 2 assumes familiarity with the facts of the case.

3 **II. LEGAL STANDARD**

4 “A motion in limine is a procedural mechanism to limit in advance [of trial] testimony or
 5 evidence in a particular area.” *United States v. Heller*, 551 F.3d 1108, 1111 (9th Cir. 2009); *see*
 6 *also* Fed. R. Evid. 401, 403. While the Federal Rules of Evidence (“FRE”) do not explicitly
 7 permit motions *in limine*, they are a part of a “district court’s inherent authority to manage the
 8 course of trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984). A motion *in limine* should
 9 not be used to resolve factual disputes, weigh evidence, or as a substitute for a motion for
 10 summary judgment. *See, e.g., Coppi v. City of Dana Point*, 2014 WL 12589639, at *3 (C.D. Cal.
 11 Feb. 24, 2014).

12 FRE 401, 402, and 403 generally govern what evidence is “relevant” for the purposes of
 13 trial and when relevant evidence is nonetheless inadmissible. In a nutshell, evidence is generally
 14 admissible at trial if it is relevant, unless the probative value of such evidence is substantially
 15 outweighed by such unwanted dangers as unfair prejudice or misleading the jury. *See* Fed. R.
 16 Evid. 401–403. “Unfair prejudice” means “the possibility that the evidence will excite the jury to
 17 make a decision on the basis of a factor unrelated to the issues properly before it.” *Heyne v.*
 18 *Caruso*, 69 F.3d 1475, 1481 (9th Cir. 1995) (quoting *Mullen v. Princess Anne Volunteer Fire*
 19 *Co.*, 853 F.2d 1130, 1134 (4th Cir. 1988)). A motion *in limine* is ordinarily granted only if the
 20 evidence at issue is inadmissible on all potential grounds; if not, the evidentiary ruling is better
 21 deferred until trial, to allow for questions of foundation, relevancy, and prejudice to be resolved
 22 with the appropriate context. *See United States v. Sims*, 550 F. Supp. 3d 907, 912 (D. Nev. 2021).
 23 A court’s ruling on a pre-trial motion *in limine* is preliminary and can be revisited at trial based
 24 on the facts and evidence as they are actually presented. *See, e.g., Luce*, 469 U.S. at 41 (“Indeed

1 even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound
2 judicial discretion, to alter a previous in limine ruling.”).

3 Subject to these principles, the Court issues these rulings for the guidance of the parties.

4 **III. DISCUSSION**

5 **A. Stipulations & Joint Requests of the Parties**

6 Pursuant to the Parties’ stipulations (Dkt. No. 83 at 3–4; Dkt. No. 84 at 5–7), the Court
7 ORDERS the following:

8 (1) Pursuant to FRE 615, witnesses who are not exempt under FRE 615 are
9 EXCLUDED from the courtroom when not testifying, to avoid hearing the testimony
10 of other witnesses. Witnesses are also DIRECTED to avoid discussing their
testimony or the case with other witnesses during the trial. Counsel are
DIRECTED to ensure that the witnesses are informed of these instructions.

11 (2) The Parties agree that, except for good cause shown, any witnesses, experts, or
experts’ opinions which were not timely disclosed during discovery are
EXCLUDED.

12 (3) The Parties request “a continuing objection to all evidence subject to these
motions in limine, but not ultimately excluded by the Court.” Dkt. No. 83 at 4. To
the extent this request applies to the material the Court orders excluded but is
produced at trial, the request is GRANTED. But this request is DENIED as to any
evidence that the Court declines to rule as inadmissible at this stage, as explained
below. Such evidence will require a case-by-case approach, and the Parties must
object on an evidence-specific basis during trial.

13 (4) The Parties are DIRECTED to meet at a mutually agreed upon time each day during
trial to exchange a set of proposed exhibits to be used and provide advanced
notice of the anticipated witnesses to be called the following day. The Parties are
required to confer each day following this exchange to make relevant stipulations
and discuss any remaining objections. To the extent any objections remain after
this conferral, the witness and exhibit list shall be emailed to the Courtroom
Deputy by 9 p.m. each day.

21 **B. Evidence Excluded by Stipulation of Parties**

22 The Parties stipulate to the exclusion of the following categories of evidence and
23 argument at trial (Dkt. No. 83 at 3–4; Dkt. No. 84 at 5–7):

24 (1) Any “golden rule argument” or related testimony, meaning any evidence that
invites jurors to put themselves in the place of Plaintiff;

- 1 (2) Any argument or suggestion (e.g., argument that a large verdict will “send a
2 message”) that is intended to or has the effect of persuading the jurors to punish
Defendants through the verdict;
- 3 (3) Evidence or testimony from any witness, including expert witnesses, that contain
conclusions of law.
- 4 (4) Any suggestion or inference to the jury that either Party or their attorneys has
5 wrongfully or improperly moved to prohibit evidence, including any reference to
the Parties’ motions *in limine* or any of the Court’s orders thereupon. The Parties
6 are not prohibited from raising appropriate objections during trial in accordance
with any of the Court’s orders on these motions *in limine*.

7 **C. Plaintiffs’ Disputed Motions *in Limine***

8 1. **Motion *in Limine* 1: Exclusion of Details of Reason for Plaintiff’s
9 Incarceration and Prior Criminal History**

10 Plaintiff agrees that the jury should be told that he has been convicted of a felony but
11 argues that the prejudicial effect of allowing the jury to know details related to his felony
12 conviction outweigh any probative value such evidence has in this case per FRE 403. Dkt.
13 No. 84 at 4. Defendants respond that evidence of his convictions and criminal history are
14 relevant to his damages and, specifically, his potential loss of future earning capacity. Dkt.
15 No. 88 at 2. Defendants also assert that Plaintiff’s criminal history may be used as impeachment
16 evidence pursuant to FRE 609.

17 At the pretrial conference, Defendants indicated that their damages expert relied on the
18 details of Plaintiff’s criminal history in forming opinions regarding his future earning capacity.
19 An expert’s opinions are generally admissible, even if based on otherwise inadmissible evidence.
20 Fed. R. Evid. 703. But, to the extent Defendants intend to offer the details regarding Plaintiff’s
21 criminal history, including regarding Plaintiff’s current conviction, upon which its expert relied
22 in forming his future earning capacity opinions, such evidence may be limited. *See* Fed. R.
23 Evid. 703 (incorporating the probative versus prejudicial balancing test from FRE 403 into the
24

1 rule allowing admission of otherwise inadmissible evidence relied upon by an expert in forming
 2 opinion testimony).

3 Pursuant to FRE 609, admissibility of evidence of prior criminal convictions for the
 4 purpose of impeachment in a civil case may also be limited by the FRE 403 balancing test. This
 5 balancing test is even more stringent in the case of convictions that are more than 10 years old.
 6 Fed. R. Evid. 609(b)(1) (noting that the probative value must “*substantially outweigh*[] its
 7 prejudicial effect” to be admissible for impeachment (emphasis added)). Juvenile convictions are
 8 strictly inadmissible for impeachment in civil cases. *Id.* at 609(d). Further, “absent exceptional
 9 circumstances, evidence of a prior conviction admitted for impeachment purposes may not
 10 include collateral details and circumstances attendant upon the conviction.” *United States v.*
 11 *Osazuwa*, 564 F.3d 1169, 1175 (9th Cir. 2009) (alteration in original) (quoting *United States v.*
 12 *Sine*, 493 F.3d 1021, 1036 n.14 (9th Cir. 2007)). “Generally, ‘only the prior conviction, its
 13 general nature, and punishment of felony range [are] fair game for testing the defendant’s
 14 credibility.’” *Id.* (quoting *United States v. Albers*, 93 F.3d 1469, 1480 (10th Cir. 1996)).

15 Thus, the Court must be able to weigh the probative value of the anticipated evidence
 16 related to Plaintiff’s current conviction and criminal history against its potential prejudicial effect
 17 in either context for which it may be offered. Because the Court does not yet know the level of
 18 detail or the context in which the evidence may be offered, it cannot yet determine its
 19 admissibility pursuant to FRE 403. The Court therefore RESERVES RULING on this motion *in*
 20 *limine* and will rule on a case-by-case basis as needed at trial. However, the Parties’ discussions
 21 on this topic will be limited to what was disclosed in the expert reports or in deposition
 22 testimony of the experts.

1 2. **Motion *in Limine* 2: Exclusion of Evidence of Other Lawsuits by Plaintiff**

2 Plaintiff moves to exclude evidence or arguments regarding any “grievances, complaints
 3 and/or . . . lawsuits” that Plaintiff may have been involved in as impermissible “propensity or
 4 character evidence” and because its potential prejudicial effect would outweigh its minimal
 5 probative value. Dkt. No. 84 at 4–5. Plaintiff does not specify any particular evidence he
 6 anticipates Defendants might offer. At the pretrial conference, Defendants noted that they are
 7 unaware of any prior lawsuits but may offer evidence related to grievances or complaints
 8 Plaintiff may have filed while incarcerated for the purpose of impeachment. *See also* Dkt. No. 88
 9 at 3.

10 The Court does not have sufficient information as to the nature of the anticipated
 11 evidence to determine its relevance, probative value, or potential prejudicial effect. As such, the
 12 Court RESERVES RULING on this motion *in limine* and will rule on a case-by-case basis as needed
 13 at trial.

14 3. **Motion *in Limine* 5: Exclusion of Impermissible Character Evidence**

15 Plaintiff generally moves for exclusion of impermissible character evidence, including
 16 “specific instances of conduct” and “evidence consisting of personal opinions of plaintiff’s
 17 character or reputation by any defense witness,” pursuant to FRE 404 and 608. Dkt. No. 84 at 6.
 18 Defendants do not dispute that such character evidence is generally inadmissible but notes that
 19 the rules provide for certain exceptions and asks the Court to reserve ruling because Plaintiff
 20 fails to identify “specific evidence or witnesses that should be excluded.” Dkt. No. 88 at 3.

21 Given the non-specific nature of Plaintiff’s request, the Court RESERVES RULING on this
 22 motion *in limine* and will rule on a case-by-case basis as needed at trial.

1 4. **Motion *in Limine* 7: Exclusion of Tax Liability and Financial Burden as to**
 2 **Any Damages Awarded to Plaintiff**

3 Plaintiff requests exclusion of any discussion of any potential tax liabilities Plaintiff
 4 might incur from a damages award. Dkt. No. 84 at 7. Plaintiff similarly asks to exclude any
 5 discussion of the potential financial burden such an award may place upon Defendants. *Id.*
 6 Defendants agree that discussion of tax liability should be excluded but fail to address or oppose
 7 the exclusion of discussion of financial burden. Dkt. No. 88 at 4. At the pretrial conference,
 8 Defendants stated they would not assert an inability to pay argument. From this, the Court
 9 understands Plaintiff's motion to be unopposed.

10 The Court therefore GRANTS this motion *in limine* and EXCLUDES any discussion of
 11 potential tax liability or financial burden upon either Party arising from an award of damages to
 12 Plaintiff.

13 D. **Defendants' Disputed Motion *in Limine***

14 1. **Exclusion of Evidence Relating to DOC's Liability on Plaintiff's Negligence**
 15 **Claim and Causation that Does Not Relate to Damages**

16 Defendants seek exclusion of any evidence that solely relates to Defendants' liability and
 17 causation, given that these issues have already been determined and will not be at issue at trial
 18 and therefore evidence on these issues are irrelevant and unfairly prejudicial. Dkt. No. 83 at 4
 19 (citing FRE 401–403). Plaintiff objects primarily on the basis that most of the challenged
 20 evidence related to liability and causation will be probative as to Plaintiff's damages, particularly
 21 his emotional distress and suffering, and will generally be necessary for providing "essential
 22 context needed to assess the damages appropriately." Dkt. No. 90 at 2–3. At the pretrial
 23 conference, Plaintiff's counsel highlighted that Plaintiff is still incarcerated and is still dependent
 24 on the Department of Corrections ("DOC") for his ongoing treatment and medical care; for
 example, Plaintiff requires treatment to keep from fully losing vision in his right eye. Plaintiff

1 argues that the evidence Defendants are challenging goes to Plaintiff's damages, as it
2 contextualizes Plaintiff's justifiable fear of continued and future harm. Plaintiff further objects to
3 the extent that Defendants will attack Plaintiff's credibility regarding his testimony related to his
4 present condition and future damages claims and argues that the expert testimony would be
5 relevant to objectively contextualize Plaintiff's subjective testimony and rebut any suggestion
6 that Plaintiff's subjective understanding of his past and potential future damages is unreasonable.

7 At the pretrial conference, Defendants clarified that they are specifically concerned with
8 Plaintiff's anticipated expert and lay witness testimony regarding DOC procedures and actions
9 that may have contributed to Plaintiff's injuries. Defendants agree that Plaintiff should be
10 allowed to testify as to his own condition and mental state. Defendants further note that this case
11 is limited by Plaintiff's Complaint to damages related to his left eye only, and that any evidence
12 or argument as to damages related to his right eye are beyond the scope of this litigation.

13 The Court agrees with Defendants, as a conceptual matter, that evidence or references
14 strictly related to liability or causation, and not damages, would likely be irrelevant at trial and
15 potentially highly prejudicial or create risk of error. *See* Fed. R. Evid. 401–403. Similarly, the
16 Court agrees that this case is limited to damages related to Plaintiff's left eye only. But the Court
17 also agrees with Plaintiff that at least some of the evidence or references related to liability or
18 causation could inform the jury's understanding and determination of damages, especially future
19 damages related to emotional distress. The probative value of such testimony would be further
20 enhanced to the extent Defendants open the door by suggesting that Plaintiff's subjective
21 testimony related to potential future damages is unreasonable or otherwise uncredible.

22 The Court therefore GRANTS IN PART Defendants' motion and EXCLUDES any evidence or
23 argument which goes to liability and causation only, including Plaintiff's witnesses who are
24 anticipated to testify about the Defendants' procedures and actions that were already determined

1 to be negligent. Plaintiff may call these witnesses in rebuttal, if appropriate, should the
2 Defendants open the door to such testimony by attacking Plaintiff's credibility or the
3 reasonableness of Plaintiff's subjective understanding of his damages. Further, any evidence or
4 testimony regarding damages related to Plaintiff's right eye is also EXCLUDED, although Plaintiff
5 may briefly testify regarding the fear of losing vision in his right eye in connection with his
6 claim for emotional damages, if appropriate. Plaintiff's medical experts must limit their
7 testimony to the actual damage Plaintiff has suffered to his left eye only. To the extent the
8 anticipated testimony of Plaintiff's experts or treating physicians regarding *how* Plaintiff's eye
9 was damaged may be objectionable as irrelevant to the limited issue of Plaintiff's damages
10 (FRE 401–402) or overly prejudicial (FRE 403), the Court RESERVES RULING at this time and
11 will rule on a case-by-case basis as needed at trial.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Parties' motions *in limine* are GRANTED IN PART and the
14 Court RESERVES RULING on the remaining motions as set forth in this Order.

15 Dated this 4th day of October 2023.

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17 Tana Lin
18 United States District Judge
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